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to be eminently desirable for the protection of attorneys, and it is quite commonly allowed. *Jones v. Morgan*, 39 Ga. 310; *Pilkington v. Brooklyn Heights R. Co.*, 49 N. Y. App. Div. 22, 63 N. Y. Supp. 211. It has sometimes been thought that its existence is an anomaly. See *Coughlin v. New York, etc. R. Co.*, *supra*, 448. It is submitted, however, that it can be justified by reference to the summary or equitable jurisdiction possessed by common-law courts to prevent an abuse of their authority. See SMITH, ACTION AT LAW, 10 ed., 20-23.

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — BANKRUPT'S TITLE IN CAUSE OF ACTION BEFORE APPOINTMENT OF TRUSTEE. — A voluntary bankrupt brought suit against the defendant after filing the petition, but before the election of a trustee. *Held*, that the defendant may not defeat the suit by showing the pendency of the bankruptcy proceedings. *Johnson v. Collier*, U. S. Sup. Ct., Jan. 9, 1912.

Though authorities are few, the better opinion seems to be that the title to the bankrupt's property after the adjudication and prior to the election of a trustee is not *in custodia legis*, but is defeasibly vested in the bankrupt. See 20 HARV. L. REV. 411; 21 *id.* 531; 25 *id.* 79.

BANKRUPTCY — SET-OFF — DEBT OF BANKRUPT AND DEBT OF CREDITOR TO TRUSTEE. — A trustee in bankruptcy sued on a claim for services rendered by him as trustee. The defendant set up a counterclaim for the failure of the bankrupt to perform a contract. This failure had occurred subsequently to the bankruptcy. The Bankruptcy Act, § 68, allows set-offs in "cases of mutual debts or mutual credits;" the set-off against the bankrupt must be a provable claim. *Held*, that the set-off should not be allowed. *Howard v. Magazine & Book Co.*, 131 N. Y. Supp. 916 (App. Div.).

Mutual debts must be in the same right. *Wright v. Rogers*, 3 McLean (U. S.) 229; *Bausman v. Kinnear*, 79 Fed. 172. The trustee in bankruptcy acts in a dual capacity, representing the creditors and the bankrupt. Rights and obligations passing to him from the bankrupt are in the interest of the bankrupt; obligations incurred by him subsequently, in that of the creditors. Obligations of the latter kind must be settled in full, whereas the bankrupt's creditors obtain only a dividend. The debts are clearly in different rights, and it would be unfair to give one creditor full payment, merely because he became indebted to the trustee. The English law under like statutes is in accord. *Alloway v. Steere*, 10 Q. B. D. 22; *West v. Pryce*, 2 Bing. 455. The converse of the principal case should be similarly decided. But see *In re Crystal Spring Bottling Co.*, 100 Fed. 265. The case suggests the further question whether a claim on an executory contract is provable at all. See BANKRUPTCY ACT OF 1898, § 68. If the contract is unilateral, it should be, for there is a fixed liability of the bankrupt to perform; but when it is an assignable bilateral contract, there is a contingency that the trustee will elect to make it his own and not the bankrupt's, and the provability of contingent claims is doubtful. See 23 HARV. L. REV. 636.

BANKRUPTCY — VOLUNTARY PROCEEDINGS — DISTRIBUTION OF SURPLUS. — After the principal of all approved claims against a voluntary bankrupt's estate was paid in full, together with interest to the date of filing of the petition, a large surplus remained in the hands of the trustee. *Held*, that those who held approved claims are entitled to interest accruing on them after the filing of the petition. *Johnson v. Norris*, 190 Fed. 459 (C. C. A., Sixth Circ.).

Under the present bankruptcy act, insolvency is not a requisite to filing a voluntary petition. BANKRUPTCY ACT OF 1898, § 4 *a*. See 1 REMINGTON, BANKRUPTCY, § 42; COLLIER, BANKRUPTCY, 8 ed., 96. But the act makes